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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 110819519-1640-02]

RIN 0648-BB22

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic;
Reef Fish Fishery of the Gulf of Mexico; Red Grouper Management
Measures

AGENCY: National Marine Fisheries Service (NMFS), National
Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement the
management actions described in a regulatory amendment to the
Fishery Management Plan for the Reef Fish Resources of the Gulf
of Mexico (FMP) prepared by the Gulf of Mexico Fishery
Management Council (Council). This final rule increases the
2011 commercial quota for red grouper, and thereby increases the
2011 commercial quota for shallow water grouper (SWG), sets the
commercial quota for red grouper and SWG from 2012 to 2015 and
subsequent fishing years, and increases the red grouper
recreational bag limit from two to four fish within the current
four-fish grouper aggregate bag limit. The increase in the
recreational bag limit will allow the recreational sector to

more effectively harvest the increase in the recreational allocation established in the regulatory amendment. The intended effect of this final rule is to help prevent overfishing of red grouper while achieving optimum yield (OY) by increasing the red grouper harvest consistent with the findings of the recent 2010 re-run of the stock assessment for this species using updated information.

DATES: This rule is effective [insert date of publication in the FEDERAL REGISTER].

ADDRESSES: Electronic copies of the regulatory amendment, which includes an environmental assessment and a regulatory impact review, may be obtained from the Southeast Regional Office Web site at

<http://sero.nmfs.noaa.gov/sf/GrouperSnapperandReefFish.htm>.

FOR FURTHER INFORMATION CONTACT: Peter Hood, Southeast Regional Office, NMFS, telephone: 727-824-5305, e-mail: Peter.Hood@noaa.gov.

SUPPLEMENTARY INFORMATION: The reef fish fishery of the Gulf of Mexico (Gulf) is managed under the FMP. The FMP was prepared by the Council and is implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

On September 21, 2011, NMFS published a proposed rule for the 2011 red grouper regulatory amendment and requested public

comment (76 FR 58455). The proposed rule and the regulatory amendment outline the rationale for the actions contained in this final rule. A summary of the actions implemented by this final rule is provided below.

This final rule increases the commercial quota and the recreational allocation for Gulf red grouper and thereby increases the Gulf red grouper total allowable catch (TAC). This final rule increases the Gulf red grouper 2011 commercial quota from 4.32 million lb (1.96 million kg) to 5.23 million lb (2.82 million kg). This rule also sets the Gulf red grouper commercial quotas for 2012 to 2015 at 5.37 million lb (2.37 million kg) for 2012, 5.53 million lb (2.44 million kg) for 2013, 5.63 million lb (2.51 million kg) for 2014, and 5.72 million lb (2.59 million kg) for 2015, and subsequent fishing years. However, these increases in the red grouper commercial quota are contingent upon the TAC not being exceeded in the previous fishing year (regardless of which sector is responsible for any overage). Increases in the Gulf red grouper commercial quotas from 2012 to 2015 will correspondingly increase the SWG quota to 6.21 million lb (2.82 million kg) for 2012, 6.37 million lb (2.89 million kg) for 2013, 6.47 million lb (2.93 million kg) for 2014, and 6.56 million lb (2.98 million kg) for 2015, and subsequent fishing years. Increases in the SWG quota are contingent upon the red grouper TAC or gag TAC not being

exceeded in the previous fishing year.

This rule also increases the recreational allocation of Gulf red grouper for 2011 from 1.36 million lb (0.62 million kg) to 1.65 million lb (0.75 million kg). The recreational allocation for 2012 to 2015 would be 1.70 million lb (0.78 million kg) for 2012, 1.74 million lb (0.79 million kg) for 2013, 1.78 million lb (0.81 million kg) for 2014, and 1.80 million lb (0.82 million kg) for 2015, and subsequent fishing years.

Given the increase in the recreational allocation and that the recreational sector's harvest has been less than catch targets in recent years, a relaxation of recreational management measures is warranted. This final rule increases the Gulf red grouper recreational bag limit from two to four fish. Amendment 32 to the FMP, currently under development, would establish an adaptive management approach for this new bag limit through an accountability measure. Under Amendment 32, if the red grouper recreational ACL is exceeded, the bag limit would be reduced for the subsequent year by one fish (with a two-fish bag limit as the lowest bag limit allowable under this accountability measure).

Comments and Responses

NMFS received seven letters on the proposed rule; one from an industry organization and six from individuals. Three of the

letters supported the proposed rule, and are not addressed here. Four letters opposed some or all of the management measures. These letters contained two distinct comments to the rule, which are addressed below.

Comment 1: Two comments from for-hire operators indicated they would prefer maintaining the current two-fish bag limit if the February 1 to March 31 seasonal closure could be lifted. The commenters stated that the current 2-month closure limits their ability to market fishing trips.

Response: Because the red grouper closed season for the 2011 fishing year has already passed, the Council only evaluated increasing the recreational bag limit to allow the recreational sector to more fully harvest its increased allocation and achieve OY specifically for the 2011 fishing year. If the bag limit was not increased, then the ability of the recreational sector to harvest its allocation for the 2011 fishing year would be reduced. The current February 1 through March 31 seasonal closure for SWG, which includes red grouper, was implemented through Amendment 30B to the FMP (April 16, 2009, 74 FR 17603). The current closure was implemented to co-manage gag and red grouper and constrain the recreational gag harvest while simultaneously allowing the stock to increase and allow the red grouper harvest to be harvested as close to OY as possible. As

the gag stock rebuilds, the Council may examine management alternatives to the current closed season.

Comment 2: Two comments, one from the for-hire sector and one from the commercial sector, suggested the increases in the red grouper recreational bag limit and quota were too large. The for-hire captain supported a three-red grouper bag limit, and both commenters supported a reduced quota increase.

Response: The Council evaluated bag limit analyses from Amendment 30B to the FMP, which indicated the increase in the recreational sector's allocation could support a four-fish bag limit. However, to ensure this bag limit increase does not lead to overfishing, the Council has submitted for approval by the Secretary of Commerce an accountability measure (AM) in Amendment 32 to the FMP that would decrease the recreational bag limit if the recreational annual catch limit (ACL) is exceeded in a fishing year. Additional recreational AMs implemented through Amendment 30B and proposed in Amendment 32 will allow for recreational seasonal closures should landings indicate the recreational sector's ACL is projected to be met or exceeded.

The rerun of the 2009 update assessment for red grouper supports the 910,000 lb (412,769 kg) increase in the commercial quota. This quota is less than the current ACL for the commercial sector for red grouper. The commercial harvest of red grouper is managed under the Gulf grouper-tilefish

individual fishing quota (IFQ) program. The IFQ program functions as an AM for the commercial sector because the program closely monitors commercial landings and IFQ participants are limited to their specific IFQ allocation each fishing year. Therefore, it is unlikely the commercial ACL would be exceeded during a fishing year.

Classification

The Regional Administrator, Southeast Region, NMFS has determined that this final rule is necessary for the conservation and management of red grouper in the Gulf of Mexico and is consistent with the Magnuson-Stevens Act and other applicable laws.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule is not repeated here. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

NMFS finds good cause under 5 U.S.C. 553(d) to waive the

delay in effective date for this rule. Delaying the effectiveness of this final rule is unnecessary and contrary to the public interest. This rule increases the 2011 commercial quota for red grouper, which in turn increases the 2011 commercial quota for SWG and the red grouper recreational bag limit to four fish. These measures will benefit commercial and recreational fishermen, and will not have any adverse affects on the grouper stocks in the Gulf of Mexico. Additionally, the immediate effectiveness of this final rule will allow fishermen to more effectively harvest the increase in the red grouper and SWG quota and red grouper recreational bag limit established in the regulatory amendment during the current fishing season. Delaying implementation of these measures could result in red grouper fishermen not having the opportunity to achieve OY from the stock, because the sectors would have insufficient time to harvest the quota increase before the fishing year's end. A delay would thus diminish the social and economic benefits for red grouper fishermen this rule provides, and undermine the purpose of the rule itself. Finally, this rule creates no new duties, obligations, or requirements for the regulated community that would necessitate delaying this rule's effectiveness to allow them to come into compliance with it. Indeed, parties regulated by this rule can continue to conduct their operations without modification even after this rule is in effect. Thus,

delaying the rule's effectiveness is unnecessary and contrary to the public interest.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: October 28, 2011

John Oliver,
Deputy Assistant Administrator
For Operations,
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

PART 622--FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

Authority: 16 U.S.C. 1801 et seq.

2. In § 622.39, the first sentence in paragraph (b)(1)(ii) is revised to read as follows:

§ 622.39 Bag and possession limits.

* * * * *

(b) * * *

(1) * * *

(ii) Groupers, combined, excluding goliath grouper and Nassau grouper--4 per person per day, but not to exceed 1 speckled hind or 1 warsaw grouper per vessel per day, or 2 gag per person per day. * * *

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3. In § 622.42, two sentences are added after the first sentence in the introductory text and paragraphs (a)(1)(iii)(A) and (C) are revised to read as follows:

§ 622.42 Quotas.

* * * Annual quota increases are contingent on the total allowable catch for the applicable species not being exceeded in the previous fishing year. If the total allowable catch is exceeded in the previous fishing year, the RA will file a notification with the Office of the Federal Register to maintain the quota for the applicable species from the previous fishing year for following fishing years, unless the best scientific information available determines maintaining the quota from the previous year is unnecessary. * * *

(a) * * *

(1) * * *

(iii) * * *

(A) SWG combined. (1) For fishing year 2011--6.07 million lb (2.75 million kg).

(2) For fishing year 2012--6.21 million lb (2.82 million kg) .

(3) For fishing year 2013--6.37 million lb (2.89 million kg) .

(4) For fishing year 2014--6.47 million lb (2.93 million kg) .

(5) For fishing year 2015 and subsequent fishing years--6.56 million lb (2.98 million kg) .

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(C) Red grouper. (1) For fishing year 2011--5.23 million lb (2.82 million kg) .

(2) For fishing year 2012--5.37 million lb (2.37 million kg) .

(3) For fishing year 2013--5.53 million lb (2.44 million kg) .

(4) For fishing year 2014--5.63 million lb (2.51 million kg) .

(5) For fishing year 2015 and subsequent fishing years--5.72 million lb (2.59 million kg) .

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